Frequently Asked Questions

An ADR Consortium Mediator answers your questions:

What is the ADR Consortium? **ADR** stands for **Al**ternative **D**ispute **R**esolution, a voluntary) program of the Seattle Federal Executive Board to resolve local Federal workplace disputes effectively and efficiently at greatly reduced cost.

When did the ADR Consortium start? Our informal program began around 1994, but the name SMART was adopted in 2001 with the start of our formal program. It is SMART in terms of time and costs saved for parties to use SMART.

What is the authority for SMART?

- In 1996, the Administrative Dispute Resolution Act passed.
- Also, EEOC Notice 915.002 of 1995 stated, "The Equal Employment Opportunity
- Commission (EEOC) is firmly committed to using alternative methods for resolving disputes in all of its activities…"ADR can provide faster, less expensive and contentious, and more productive results."
- Since November 1999, EEOC Regulation 29 CFR Part 1614 has required Federal agencies to make an ADR program available during the EEO pre-complaint and formal complaint processes.

What is Mediation? Mediation is a voluntary, informal, and confidential process in which an impartial third party, a mediator, facilitates the resolution of a dispute by promoting a voluntary agreement by the parties to the dispute.

What is an ADR Consortium Mediation? An ADR Consortium mediation involves a workplace or employment-related dispute, such as an EEO complaint or grievance, in a Federal agency in Western Washington. The trained mediator comes from a different federal agency to assure impartiality and may be assisted by a co-mediator.

What is Your Role as Mediator? My job is to help the parties reach a resolution of their dispute through the use of the mediation process. I do not decide the case or dictate the terms of a settlement. Both parties win and there is no loser, if agreement occurs.

How Long Do Most Mediations Last? Most mediation sessions last eight hours or less.

Is a Mediation a Legal Proceeding?

- It is not a legal proceeding, nor do I provide legal advice or legal counsel.
- When you agree to mediation, you do not waive the right to proceed with the formal legal dispute resolution process, provided that you file a timely complaint/grievance.
- If you are unsure of the amount of time you have, please check with your counsel/representative or the appropriate officials.

How does a typical Mediation Conference start?

- I begin with an opening statement in a joint session with both parties, regarding my role as a neutral.
- I am not an advocate or legal representative for or against either party.
- Next, I ask the complainant/grievant, to tell me in his/her own words about the complaint and the type of remedy wanted.
- I then give the other party, often a management representative, an opportunity to describe the dispute from his/her standpoint.

What Occurs After the Conference Opening?

- In the middle phase, the parties have a joint discussion where clarifying questions may be asked, and potential solutions, if any, may be discussed.
- Sometimes, I ask to meet privately (caucus) with each participant.
- Information discussed in your caucus is given in confidence and will generally not be shared with anyone else.
- Caucuses may include "reality checking" (objective assessment of the your position, demands and expectations).
- Following the caucuses, I may reconvene the joint session and determine if there is any area of agreement on any issue.

- If not, the parties may continue to negotiate, possibly re-caucusing with me, until it is clear if a settlement is going to emerge.

What Happens if Agreement Occurs?

- Either party is free to consult with appropriate legal, union, or management representatives regarding the proposed settlement agreement.
- If settlement is reached, I draft an agreement acceptable to all parties and, if present, their representatives.
- Appropriate management or legal personnel often review and approve the terms before they are effective.
- A signed settlement agreement is legally binding on the parties.

What Aspects of Mediation are Confidential? If you tell me something in private and ask me to keep it confidential, I am bound by law not to disclose this information voluntarily. A few rare exceptions to this rule exist, e.g., if you say that

- you committed a criminal offense or act of fraud, waste, or abuse, or
- you plan to commit a violent physical act, I may have to share this information with appropriate authorities.
- The session is neither tape-recorded nor transcribed; after the session, notes and document copies are destroyed.
- The mediation agreement and the resulting settlement agreement are ***not*** confidential, because officials have to review the agreement before it becomes binding on the agency.
- The complainant/grievant, may not request information from me in any future legal proceeding, if the mediation does not resolve the dispute.
- 5 USC 574 contains full information.

May Representatives Attend a Mediation? Either party may bring to the mediation conference a representative or legal counsel (subject to negotiated agreements for bargaining unit employees) and should inform the mediator about a representative in advance.

What Standards Guide a Mediator? ADR Consortium mediators follow the Model Standards of Conduct for Mediators (Model Standards) issued by the American Arbitration Association (AAA); the American Bar Association (ABA); and the Society of Professionals in Dispute Resolution (SPIDR).[2]

1. Self-Determination: Self-determination (voluntary choices and un-coerced agreements made by parties) is fundamental to mediation. The mediator gives the parties the opportunity to consider all proposed options.

2. Impartiality: Mediator impartiality is central to the continued success of the mediation process.

3. Conflicts of Interest: A conflict of interest is a dealing, relationship, or interest in the controversy or its outcome that may create bias or an impression of possible bias. The mediator discloses all actual and potential conflicts that are or could be perceived as prejudicial. If all parties agree to continue, the mediation may proceed. If the conflict of interest casts doubt on the integrity of the process, the mediator declines to proceed.

4. Confidentiality: The mediator shall not voluntarily disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law. Confidentiality does not limit or prohibit the program research or evaluation of ADR Consortium.

5. Quality of the Process: The mediator has the proper training and experience and conducts the session fairly, diligently, and within the necessary time frames.

For What Types of Disputes is Mediation Helpful?

- The parties are interested in settlement, but personality conflicts or communication issues has hampered negotiations.
- The catalyst for the complaint/grievance may be an underlying issue not formally part of the complaint or grievance and not resolvable by available legal relief.
- A continuing relationship between the parties is necessary or desirable.
- At least one party's view of the case may be unrealistic; a discussion with a mediator may move the process forward.
- The parties expect to settle eventually, maybe at the last minute.
- At least one party wants to minimize the risk of an imposed outcome.
- A desire to reduce high litigation costs exists.
- Despite a desire to avoid adverse precedent, traditional negotiations have reached an impasse.
- Multiple and/ or complex issues are involved.

- Time is a major factor, i.e., resolution is needed quickly.
- The parties prefer to maintain confidentiality about the issues.
- There is more than one possible solution and no solution that is necessarily "right."
- For bargaining unit employees, the union and management must have negotiated the use of ADR or agreed to it on a case-by-case basis.

For What Types of Disputes is Mediation Less Productive?

- An indication exists that criminal conduct, fraud, waste or abuse was committed by either party.
- The case involves significant legal, policy, or constitutional issues.
- One of the parties wants a precedent, to establish a principle or to prove a point.
- Uniform treatment of the issue or disputant is needed, e.g., issue has nationwide impact or many similar suits are pending.
- A full public record of the proceeding is important.
- The dispute significantly affects non-parties, e.g., the relationship between a local union and federal agency.
- The case is likely to settle through unassisted negotiations.
- One party seeks major damages.
- One or both of the parties are not open to resolution through mediation.

How much does ADR Consortium mediation cost? The ADR Consortium provides FREE mediation when both parties request it. Trained and certified mediators are Federal employees paid by their home agencies. The using agency pays local travel, e.g., mileage. The only condition of participation is that all parties, including disputants, SMART mediators, and federal agency coordinators, complete program evaluation forms at the end of the mediation and forward them to the ADR Consortium Coordinator. This confidential information is used only to assess and improve our process.

Does mediation work? Approximately 80% of mediated cases are fully resolved. Participants express a high degree of satisfaction with the fair and efficient process which avoids the stress of a lengthy investigation and possible litigation.